

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4335 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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KOLI HARESH @ HARIO BADO                      MULJIBHAI

Versus

DISTRICT MAGISTRATE

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Appearance:

Mr. Pravinn Gondal for  
MR YOGESH S LAKHANI for Petitioner  
Mr. Samir Dave, A.G.P. for the Respondents Nos. 1, 2, 3

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 06/10/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. Pravin Gondalia for  
Advocate Mr. Y.S. Lakhani on behalf of the petitioner  
and learned A.G.P. Mr. Samir Dave on behalf of the  
respondents nos.1, 2 and 3.

1. The detention order dated 15-12-1998 passed by

the respondent no.1-District Magistrate, Bhavnagar against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution.

2. The grounds of detention supplied to the petitioner-detenu under Section 9(1) of "PASA" produced at Annexure "B" of the compilation indicates that three criminal cases for the offences made punishable under the Indian Penal Code are registered against the petitioner at "A" Division Police Station, Bhavnagar on 9-8-1997, 12-2-1998 and 29-9-1998. Furthermore, four witnesses on assurance of anonymity have supplied information about the alleged criminal activities of the petitioner vide their statement dated 30-11-1998. That said witnesses have stated the fact in respect to incidents dated 11-11-1998, 8-11-1998, 19-11-1998 and 4-11-1998 respectively.

3. It appears from the grounds of detention that the detaining authority in consideration of material produced before him pertaining to said three criminal cases and the statement of four anonymous witness have come to the conclusion that the petitioner is a "dangerous person" within the meaning of Section 2(c) of "PASA". The detaining authority has also come to the conclusion that four witnesses who have supplied information of criminal activity of the petitioner have expressed their fear that if their identity is disclosed they may suffer harm from the petitioner. That such fear being genuine, privilege under Section 9(2) of "PASA" has been claimed by the detaining authority. The detaining authority has also come to the conclusion that enforcement of general law not being sufficient to prevent the petitioner from continuing his antisocial activity, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been submitted on behalf of the petitioner that the privilege claimed for the anonymous witnesses by the detaining authority is not genuine inasmuch as the copies supplied to the petitioner of the statement of witnesses do not disclose the fact that detaining authority has verified the genuineness of the facts stated therein as well as fear expressed by the said witnesses in respect to disclosure of their identity. It is also submitted that all the statements appear to have been recorded on 30-11-1998 in respect to

incidents having taken place on different dates and the detaining authority appears to have made a one word endorsement "verified" on 15-12-1998, i.e. the date on which the impugned order is passed. The said fact suggests that the detaining authority has acted mechanically, and as such, subjective satisfaction is vitiated and has rendered the impugned order invalid. To support the submission, reliance has been placed on the observation made by this Court in the matter of JAKIRBHAI RAHIMBHAI NAGORI VS. DISTRICT MAGISTRATE, MEHSANA & ORS. (1996(1) G.L.H. 300. On scrutiny of papers, it appears that in all the four statements of anonymous witnesses, the respondent no.1-District Magistrate, Bhavnagar has made one word endorsement "verified". That in the matter of ZAKIRBHAI'S case (Supra), this Court has followed the observations made by this Court in the matter of Koli Ashwin vs. State of Gujarat decided on 12th September, 1994 vide Spl.Criminal Application no.1812/93 which read as under:

" However, as is well established, for exercising the power under Section 9(2) what is required for a detaining authority is that he must come to a subjective satisfaction himself and for that purpose, he must be able to point out either in the grounds or in the contemporaneous record that he had sufficient material before him to come to that subjective satisfaction. In the instant case, in the aforesaid background of the statement of each of the witnesses, when we turn to the statements for further material, which the detaining authority can make use of for arriving at a subjective satisfaction except for one word " verified " used by the Dy.S.P., who apparently has put it pursuant to an instruction received from the detaining authority for verifying the statement, there is no other material.

About what has been verified, what were the instructions and to what extent the verifying authority himself was satisfied about the apprehension expressed, there is nothing either in the grounds of detention alongwith its compilation or in the contemporaneous record from the office of the detaining authority."

5. Following the dictum of the above stated matter, in the instant case, I am constrained to hold that verification by mode of one word endorsement "verified" in the statement of anonymous witnesses, has vitiated the subjective satisfaction reached by the respondent no.1 in formulating the grounds of detention thus rendering the impugned order invalid.

6. As the petition succeeds on the above stated ground alone, it is not necessary to consider the other contentions raised on behalf of the petitioner.

7. On the basis of the aforesaid discussion, the petition is allowed. The impugned order dated 15-12-1998 passed by the respondent no.1-District Magistrate, Bhavnagar against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu-Koli Hareesh alias Hariyo Bado Muljibhai is ordered to be set at liberty forthwith, if not required, in any other case. Rule is made absolute accordingly.

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